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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

SINGLE MEMBER APPEAL BRANCH

Appeal No. E/5969/2004 – SM[BR] Date 09/11/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
N.T.F. (INDIA) PVT. LTD.

PLOT NO 49, SEC 3, I.M.T MANESAR, GURGAON,
HARYANA

N.T.F. (INDIA) PVT. LTD. Appellant

Vs

C.C.E. DELHI-III, GURGAON Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1412 / 2009- SM[BR] dated 30.10.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

   C.C.E. DELHI-III, GURGAON

   UDYOG VIHAR, UDYOG MINAR, VANIJYA NIKUNJ, PHASE V, GURGAON
2. Adv. / Consult SHRI BIPIN GARG ADV.
   B-1/1289-A, VASANT KUNJ NEW DELHI

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise, I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg, 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.5969/2004-SM(Br)

(Arising out of order in appeal No.307-309/AKG/GGN/2004/04 dated 8.9.2004 passed by the Commissioner of Central Excise (Appeals), Gurgaon)

M/s N.T.F.(India) Pvt Ltd — Appellant

Vs

CCE, Gurgaon — Respondent

Appeared for Appellant : Shri Bipin Garg, Advocate
Appeared for Respondent : Shri V.K. Saxena, Jt CDR

Date of Hearing: 22.10.09

Coram: **Hon'ble Mr.D.N. Panda, Judicial Member**

Final Order No. 1412 /2009 SM(Br)

Per D.N. Panda:

Disputes arose in adjudication are as follows with the fate of contest as depicted under each dispute:-

1) Duty demand of Rs.28,619/- was made on the charge of mis-statement of facts. This dispute is not contested by appellant for which the appellant has paid the duty and that has been appropriated as held by both the authorities concurrently. Therefore, no decision on this count is called for in second appeal.

2) Duty demand of Rs.59,157/- arose on account of inadmissible Cenvat credit was due to aging of bill of entry more than six months at the time of claim. There is no further dispute on the inadmissibility to decide in second appeal;

3) Injection mould involving Cenvat credit of Rs.3,28,470/- resulted in dispute which was claimed by appellant to have been sent for repair. Learned Authority below found that neither repairing was done nor the appellant had installed moulding injection to enjoy Cenvat credit. Therefore, disallowance of such credit called for confirmation in absence of any further material adduced by appellant to prove its stand.

2. Duty demand of Rs.1,29,414/- only ~~dispute~~ remained in dispute for decision after first Appeal.

3. Learned Counsel submits that the appellant unit is situated in Gurgaon. One of its sister unit which was situated in Ghaziabad had sent some of its semi-finished goods to the appellant to finish the same and meet the requirement of Maruti Udyog since that sister unit was closed after sometime for reasons beyond control of the appellant. Upon closure, due to labour problem, the goods were sent to the neighbouring plot of the appellant's factory. There finishing was done. Learned Counsel further submits that upon receipt of the goods at plot, those were subjected to painting for delivery to Maruti Udyog. But all these averments of appellant do not come out from record.

4. After hearing both the sides and examination of goods, demand of Rs.28,619/- which is not disputed today, confirmation

of disallowance of Cenvat credit of Rs.59,157/-not found to be admissible, Cenvat credit on injection mould not admissible to the extent of Rs.3,28,470/- as well as levy of duty of Rs.1,29,414/-on the goods delivered to Maruti Udyog at the factory of the appellant are confirmed.

5. The only point left over at this stage is levy of penalty. The appellant fairly submits that finding against allegations were basis for penalty. But none of the finding shows that the appellant had contumacious conduct. Learned Counsel submits that there may be lapse while claiming the Cenvat credit. But there was no deliberate intention to cause injury to revenue. Therefore, such submission called for to go through the finding of the learned Commissioner as to conduct of the appellant. Nothing comes out from the appellate order as to deliberate omission or commission calling for imposition of penalty. As a preventive measure, it would be proper to levy penalty of Rs.10,000/- only. In the circumstances, subject to reduction of penalty to Rs.10,000/-, the appeal is dismissed.

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

MPS*